



A Guide to California's Open-Meeting Law Changes for 2023

The California Legislature passed four bills in 2022 changing aspects of state open-meetings laws. Notably, lawmakers increased the ability of members of both local and state bodies to participate remotely — pandemic-inspired policy that set off debates about whether such increased flexibility for public officials would result in less accountability to the public. Additional changes include a bill that allows the presiding member of a body governed by the Ralph M. Brown Act to eject disruptive individuals and a bill making a minor change affecting distribution of materials used in meetings. The following changes to both the Brown Act and the Bagley-Keene Act are in effect in 2023, with some provisions set to sunset at different times.

PART I: Changes to the Ralph M. Brown Act

[AB 2449](#) (Blanca Rubio) codified at Gov. Code sections [54953](#) and [54954.2](#).

Open Meetings: Teleconferencing

The bill changed teleconferencing provisions to make it easier for an individual member of a body to participate remotely – cast votes, comment using remote technology – so long as specific criteria are met. Those requirements are:

- The legislative body must approve each instance when an individual member wishes to participate remotely, under a “just cause” standard (caregiving responsibilities, contagious illness, physical or mental disability, or travel due to official business) or due to emergency medical circumstances;
- A quorum of members must meet in one publicly accessible physical location inside the jurisdictional territory.
- Individual members cannot participate remotely for more than three consecutive months, 20 percent of regular meetings or twice in a calendar year for bodies that meet fewer than 10 times per year.
- The legislative body must implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with federal law. Members are not required to disclose protected health information.
- When a member of a body is allowed to participate remotely, the public must also be allowed to access the meeting through remote technology, but otherwise the law does not mandate remote access for the public.

This means under the Ralph M. Brown Act, meetings of local legislative bodies can be hybrid in format – a mix of both virtual and in-person, so long as the above requirements are satisfied. Notably, the new requirements allow for remote participation without there necessarily being a declared state of emergency. The 2020 COVID-19 pandemic prompted a substantial relaxation

of in-person meeting requirements, made possible via a gubernatorial executive order. The justification for this relaxation was that in-person meetings were not possible, consistent with public-health guidelines. But AB 2449 takes it a step further, allowing teleconferencing, when there are no emergency provisions being invoked, such as gubernatorial executive order spurred by a state of emergency.

The bill also extended a provision, originally introduced via [AB 361](#) in 2021, that allows local bodies to meet entirely remotely under limited circumstances.

Provisions of AB 2449 are subject to sunset dates, which are outlined below.

Until January 1, 2024

When teleconferencing is allowed under these rules, the agenda must include time for public comment and the legislative body must give notice of the means by which members of the public may provide public comment. The legislative body cannot require public comments be submitted before the meeting, but it can continue to allow written comment to be submitted in advance of a meeting. The legislative body may not take action on agenda items if public access is disrupted due to technical difficulties. Teleconferencing members are not required to include their location in the meeting agenda and are not required to permit public access to their teleconferencing location. Teleconferencing members will be required to disclose if anyone above 18 years of age is in the room with them.

Under existing law, and as was common during the first months of the COVID-19 pandemic, the entire legislative body can use teleconferencing during a governor-declared state of emergency. AB 2449 also allows bodies to meet remotely (1) when state or local officials have imposed or recommended social distancing requirements; (2) during a meeting held to determine whether meeting in person would present imminent risks to the health or safety of attendees; or (3) when the legislative body has determined, by majority vote, that meeting in person would present imminent risks to the health and safety of attendees. Every 30 days, the legislative body can vote to continue teleconferencing if they (1) reconsider the circumstances of the state of emergency; and (2) find that teleconferencing is still necessary because the emergency impacts the ability to safely in public or because state or local officials continue to impose or recommend social distancing.

January 1, 2024 - January 1, 2026

The above rules for legislative body teleconferencing during a state of emergency expire on January 1, 2024. From 2024-2026, individual members can still participate remotely for “just cause” or in emergency medical circumstances. All rules regarding public comment and public access remain the same.

January 1, 2026 and beyond

The rules for individual members teleconferencing in the case of just cause or emergency circumstances expire on January 1, 2026. The previous Brown Act rules will again apply (unless a new law is passed). Teleconferencing will be permitted in limited circumstances, provided that

all physical teleconference locations are publicly accessible, the legislative body provides notice of the teleconference locations, the legislative body posts an agenda at each teleconference location, and at least a quorum of the legislative body participates from locations within the boundaries of the local agency's jurisdiction. Members of the public must be able to directly address the legislative body at all teleconference locations via audio, video, or both. A quorum of members must participate from within the jurisdictional boundaries of the body.

Certain meetings of health authorities can still meet via teleconference if the health authority provides a teleconference number for remote participants.

SB 1100 (Cortese) codified at Gov. Code section 54957.95 (new section)

Open Meetings: Orderly Conduct

Under the Brown Act, all members of the public have a right to attend and participate in all public meetings but “[a]n the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session.” [Govt. Code 54957.9](#).

SB 1100 added a [new section](#) to the Brown Act that specifies when an individual may be removed for disrupting a meeting, as an alternative to clearing the meeting room entirely.

“Disrupting” is defined as “engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting,” including but not limited to “failure to comply with reasonable and lawful regulations” adopted by the legislative body and “[e]nragings in behavior that constitutes use of force or a true threat of force.”

SB 1100 authorizes the presiding member or their designee to remove an individual who is disrupting the meeting after the individual is provided with a warning that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal, except a warning is not required when the individual engages in behavior that constitutes use of force or a true threat of force.

The legislative findings in SB 1100 emphasize the importance of civil liberties and reference [another provision](#) of the Brown Act that mandates the legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.

[AB 2647](#) (Levine) codified at Government Code section 54957.5

AB 2647 allows local bodies to satisfy transparency requirements related to disclosure of records tied to business set for discussion or action at a meeting if the agency posts the records online when certain requirements are met. In the event materials are circulated to a majority of members of a legislative body less than 72 hours before a meeting at which the records are relevant, online posting will satisfy public disclosure requirements if the agenda lists the website where the body posts its agendas and related records and physical copies are available during the next regular business hours for the local agency, if 24 hours still remain before that meeting begins. Records distributed to the legislative body must be distributed at the meeting if prepared by a local agency or member of the legislative body, or after the meeting if prepared by some other person.

Part II: Changes to the Bagley-Keene Act

[AB/SB 189](#) (Committee on Budget) codified at [Gov. Code 11133](#)

Open Meetings: Teleconferencing

This law change allows state bodies governed by the Bagley-Keene Open Meeting Act to hold public meetings entirely remotely via teleconferencing, with no members of the body required to meet in person, through July 1, 2023.

Section 80 of AB/SB 189, which modified the Bagley-Keene Act via a budget trailer bill, suspends certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. In essence, this means the meeting can take place entirely remotely, with the public's access limited to internet streaming technology. Under the new law, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. AB/SB 189 requires that each state body that holds a meeting through teleconferencing provide notice of the meeting and post the agenda, which is consistent with existing open-meetings laws.

Prior to AB/SB 189, the Bagley-Keene Act required at least one member of the state body to be physically present at the location noticed on the posted agenda and that all teleconferencing members must permit public access at their locations and post the agenda at the meeting locations.

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